IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12603 of 2005
With
SPECIAL CIVIL APPLICATION No. 20881 of 2005
to
SPECIAL CIVIL APPLICATION No. 20888 of 2005
With
SPECIAL CIVIL APPLICATION No. 20970 of 2005
With
SPECIAL CIVIL APPLICATION No. 20971 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge?

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OUTDOOR ADVERTISING OWNERS' ASSOCIATION OF AHMEDABAD & ANOTHER - Petitioners

Versus

STATE OF GUJARAT & OTHERS - Respondents

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Special Civil Application Nos. 12603 of 2005 with Special Civil Application No. 20881 of 2005 to 20888 of2005

Appearance :

MR TUSHAR MEHTA for the Petitioners
MR SIRAJ GORI, A.G.P.for Respondent No.1,
MR SI NANAVATI, SENIOR ADVOCATE WITH SANJIV DAVE FOR Respondent Nos.2 and 3.

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Special Civil Application No. 20970 of 2005 & 20971 of 2005

Appearance :

MR ND NANAVATI, SR.ADVOCATE WITH A.H.DESAI for Petitioner(s) : 1 - 2.
MR SIRAJ GORI, A.G.P.for Respondent No.1,
MR SI NANAVATI, SR. ADVOCATE WITH SANJIV DAVE FOR Respondent No.2 and 3.

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 02/02/2006

ORAL JUDGMENT

1. In this group of petitions, the petitioners have challenged the action of Respondent Nos.2 and 3 in preventing the petitioners from exhibiting advertisements on private properties situated within the Municipal Corporation limits of City of Ahmedabad without payment of revised licence fees. In essence what is under challenge is the decision of Respondent Nos. 2 and 3 to increase the rates of collection of licence fees from the owners of private properties. The petitioners have also challenged decision on the part of respondent nos. 2 and 3 to collect huge amount from the agencies who are inter-mediators between the property owners and companies who are desirous of exhibiting their advertisements under the heading of registration charges.

2. Short facts leading to the present petition are as follows:

2.1 In city of Ahmedabad on places of strategic importance, advertisements are being exhibited by various companies of their produces or services. Sites at which these advertisements are exhibited can be broadly classified into two categories. First category is the sites situated in properties belonging to Municipal Corporation of city of Ahmedabad and in the second category, are those sites on which advertisements are being exhibited on private properties. The present litigation concerns issues involving exhibition of advertisements on sites held by private individual property owners. The Municipal Corporation of Ahmedabad has been collecting licence fees from the owners or agencies where such advertisements are exhibited by private properties. This practice of collecting licence fees is going on since many years now.

2.2. The issues arising in this group of petitions are mainly pertaining to two aspects. One question is regarding collection of registration charges from the agencies who are dealing in the business of striking a deal between the property owners and the companies who wish to advertise their products or service. It is pointed out that respondent No.2 – Corporation has

formulated a policy whereby it is insisted upon that the agencies should get themselves registered before the Corporation and that they should pay registration charges to the tune of Rs. 1.50 lacs for a period of three years. This amount to be paid by the agents is not by way of refundable deposit but is to be appropriated by the Corporation as registration charges, meaning thereby that at the end of period of three years, the concerned agent would have to renew his application for registration and would have to pay the registration charges afresh as per the then prevailing rates.

2.3 Second controversy is with respect to the attempt on the part of Ahmedabad Municipal Corporation to revise the licence fees to be charged from the property owners and the agents.

2.4 Petitioners in this group of petitions are the agents who are engaged in this business and their Association.

2.5 As noted earlier, respondent No. 2 – Ahmedabad Municipal Corporation has been regulating licence fees for permitting private property owners to put hoardings

carrying advertisements of different products and services. Rates of licence fees are being revised from time to time. In the affidavit-in-rejoinder filed in Special Civil Application No. 12603 of 2005, it is pointed out that before 1992 licence fees were recovered by the Ahmedabad Municipal Corporation at the rate in the vicinity of Rs. 100/- per Sq. Mts. per year. Between 1992 to 1997 this rate was revised to 200/- per Sq.Mts. per year and from 01-04-1997 to 31-03-2004 licence fees was being charged at the rate of Rs. 350/- per Sq. Mts. per year. After 01-04-2004 there was *ad hoc* increase in the licence fees and the petitioners were made to pay fees at the rate of Rs. 455/- per Sq.Mts. per year. Subsequently, however, Ahmedabad Municipal Corporation passed a Resolution dated 3rd December, 2004 by which it was decided to levy licence fees on the basis of rates offered by the tenderer for the nearby tender sites which Ahmedabad Municipal Corporation had given out through tenders for exhibiting advertisements. It was provided that for those of privately owned sites which are within the distance of 80 metres from the road junction, such sites would carry licence fees at the rate of 16% of the amount offered by the tenderer for the tender sites. For those sites, which are of private owners and which are

situated at a distance of more than 80 metres from the road junction, licence fees will be charged at the rate of 8% of the amount offered for tender site. In other words, instead of earlier policy of charging licence fees at a flat rate for the entire city of Ahmedabad, by the above mentioned resolution, the Corporation decided to rationalise the rates of licence fees to be paid by different private owners depending upon the rate offered by tenderer for the sites in the nearby vicinity. It is the case of the petitioners that this decision of the Corporation is wholly illegal and unlawful. The grounds on which such decision is sought to be assailed by the petitioners will be gone into at a later stage. Suffice it to say at this stage that the petitioners complaint that on account of new methodology adopted by the Corporation for fixing licence fees, rate at which the licence fee that is now required to be paid has under gone quantum increase which is not justified. It is the case of the petitioners that in the guise of so called fees the Corporation is collecting tax which is not permissible under the law. It is contended that if the Corporation desires to collect the fees for regulating the activities, the same must be reasonable and cannot be excessive and must be shown to have some co-relation with

the expenses being incurred by the Corporation for the facilities being provided to the petitioner out of the funds so collected. On the other hand broadly stated, the stand of the Corporation is that the Corporation has legal authority to collect the fees for permitting the private property owners to exhibit advertisements on hoardings situated on their sites. That the Corporation has to regulate such activity and that therefore, the charging of licence fees is fully justified. It is contended that fees being charged is regulatory in nature and not compensatory and therefore, the concept of *quid pro quo* cannot be applied.

3. Before noting the rival submissions at length, it would be necessary to take note of the materials produced on record by both sides through affidavits and documents.

4. Special Civil Application No. 12603 of 2005 has been treated as lead petition and I have, therefore, recorded the pleadings and noted the contents of the documents produced in the said petition.

5.1 The petitioner of Special Civil Application No.

12603 of 2005 is an Association of Agents who are engaged in the business of displaying boards in and around city of Ahmedabad. It is stated that the members of the petitioner Association are companies or registered firms. It is pointed that up to the years 1997 – 1998, the rate at which the licence fee which was recovered from the private property owners by the Corporation was Rs. 350 Sq.Mts. per year. That this rate prevailed right up to year 2004. In the year 2004 Ahmedabad Municipal Corporation initiated the movement to increase such rates. The Commissioner initiated the proposal vide his letter dated 22-09-2004. Several recommendations were made for increase in the rate of licence fees to be charged. Ultimately, with certain modifications, the Corporation passed a Resolution adopting rate revision for licence fees. As noted earlier instead of flat rate of licence fees to be calculated for all hoardings exhibited in privately owned properties in the entire city of Ahmedabad, new formula was accepted. As per the new formula depending on the rate offered by the tenderer for the site belonging to the Ahmedabad Municipal Corporation in the near vicinity, private property owners or their agents had to bear burden of the licence fees to be paid to the Corporation. The formula adopted was that

for the properties which are within the distance of 80 meters of road junction, for exhibiting advertisements of hoardings on such properties, licence fees at the rate of 16% of the rate offered by the tenderer to the Corporation would have to be paid. On the other hand, for the properties which are situated beyond the distance of 80 meters from the road junction, rate at which licence fee was required to be paid was fixed at 8% of the tender rate.

5.2 It is the contention of the petitioners that new methodology adopted by the Corporation for collection of licence fees is wholly illegal and unlawful. It is suggested that on account of new methodology adopted by the Corporation, in some prime areas of the city such as Ashram Road and C.G.Road, licence fee rates have gone upward revision by many times compared to existing rates. It is contended that the new rate at which the Corporation wishes to collect licence fees, is excessive and cannot be justified by any standard. It is pointed out that licence fee was being paid at the rate of Rs. 350/- up to 31st March, 2004. By virtue of the new formula the petitioners are asked to pay licence fee at the rate ranging from Rs. 1000/- per

Sq.Mts. per year to Rs. 2700/- per Sq.Mts. per year on certain areas of the City of Ahmedabad. It is contended that this method of charing licence fee on the basis of potential of the site is not permissible under the law. It is contended that the Corporation cannot provide for different rates of licence fees for different areas of City of Ahmedabad. That such rates must be uniform and must be reasonable. It is contended that on account of unreasonable and excessive increase in the rates of licence fees, the petitioners suffer huge loss and damage and in some cases their business has become completely unavailable. Certain sites have to remain blank as there are no advertisers coming forward to put their advertisements on such hoardings in view of the increase in the licence fees.

6.1 On the other hand the case of the Corporation is that the rates for payment of licence fees had not been revised for many years. That on account of passage of time, on account of increase in infrastructure cost and on account of increase in commercial activities, it was necessary to revise the rates for licence fees.

6.2 It is pointed out that under Sections 244 and 245 of the Bombay Provisional Municipal Corporations Act (hereinafter referred as *"B.P.M.C. Act"* for short), the Corporation has powers to regulate the exhibition of advertising even on private properties exhibited through sky-signs and on hoardings. In view of the provisions contained in Sections 244, 245 and 386 of the B.P.M.C. Act the Corporation can collect licence fees at an appropriate rate. It is contended that the licence fee being charged is regulatory in nature. To control and regulate the activity, the Corporation has to provide for machinery which includes maintenance of staff and establishment. It would be necessary to ensure that the activity is well regulated, for which the charging of licence fee cannot be objected to.

6.3 From the material on record, it is further the case of the Corporation that after undertaking the exercise of collecting proper material and examining all aspects of the matter, the Corporation decided to provide for different rates for collection of licence fees for different areas of City of Ahmedabad depending on the commercial potential of different sites. It is denied that the the licence fee being charged is excessive. It

is stated in affidavit-in-reply dated 15th July, 2005 filed by Shri Pritambhai Naranbhai Raut on behalf of Ahmedabad Municipal Corporation that the charge levied on hoardings form part of the income resources of the Corporation to meet its ever increasing expenses and to meet the infrastructure needs of the public. It is further contended that levy of licence fee is regulatory mechanism adopted keeping in view the public welfare. It is further contended that the Corporation has power to collect licence fee and at what rate should it be levied is a policy decision. In the further affidavit-in-reply dated 27th July, 2005 filed by Shri Pritambhai Naranbhai Raut, it is contended that the levy of licence fee by Ahmedabad Municipal Corporation is for the purpose of generating funds to be utilised within the City limits for creation, maintenance and betterment of basic amenities and facilities for commuting public. It is contended that the legislature by framing provisions under the Act, has empowered local authority to generate funds which is to be utilised for providing better amenities and facilities for commuters. It is stated that the Corporation provides services to the members of the petitioner-Association who exhibit their advertisements on sites situated within the city limits.

It is therefore, contended that the Corporation provides for services to the members of the petitioner Association also. It is further pointed out that the tender has been granted to one Sambhav Media Limited for C.G.Road at the rate of Rs.2,01,00,117/- (Rupees Two Crore, One Lacs, One Hundred and Seventeen only) for a period of one year for the Corporation Sites. For Ashram Road, tender has been given to the same party for a sum of Rs. 1,41,00,117/- (Rupees One Crore, Forty One Lacs, One Hundred Seventeen only) for one year. It is stated that advance payment for six months is received by the Corporation for Ashram Road contract. It is suggested that on account of certain litigation contract for C.G.Road has not become operational.

7. On the basis of above pleadings, learned Advocates for the respective parties have made detailed submissions before me. On behalf of the petitioners, it is contended that any levy under Section 244, 245 and 386 of the B.P.M.C. Act must be fee and not tax. Such provisions empower the Corporation to levy fee and collection of tax is not envisaged therein. It is further contended that fee must be commensurate with the services rendered i.e., licence fees to be collected must be

comparable to the expenditure made by the Corporation for regulating the activity and at any rate such licence fee must not be excessive. It is next contended that the formula adopted by the Corporation for determining the rate at which the licence fee is to be paid is wholly arbitrary. It is contended that rate which the tenderer has offered for the tender sites belonging to the Corporation cannot be the basis for determining the licence fee to be charged from the petitioners. It is further contended that rate of licence fee must be uniform for the entire City. Even if the licence fee is found to be regulatory in nature, the Corporation does not have to spend higher amount for advertisements exhibited on sites with higher commercial potential. Therefore, to link the rate of licence fees to be charged from the petitioners with the tender amount offered by the tenderer to the Corporation can hardly be the correct yardstick for determining licence fees.

8. Reliance was placed on the decision in the case of ***Calcutta Municipal Corporation and Others v. Shrey Mercantile (P) Ltd. And Others reported in (2005) 4 SCC 245*** wherein Hon'ble Supreme Court upheld the decision of

the High Court striking down the demand for payment of mutation charges on the *ad valorem* basis upon the valuation of the properties.

9. Reliance was also placed on the decision of the Hon'ble Supreme Court in the case of ***Vam Organic Chemical Ltd. And Another v. State of U.P. And others reported in (1997) 2 SCC 715***, wherein Hon'ble Supreme Court made following observations:

> *"The High Court has taken the view that in the case of regulatory fees, like the licence fees, existence of quid pro quo is not necessary although the fee imposed must not be, in the circumstances of the case, excessive. The High Court further held that keeping in view the quantum and nature of the work involved in supervising the process of denaturation and the consequent expenses incurred by the State, the fee of 7 paise per litre was reasonable and proper. We see no reason to differ with this view of the High Court".*

On the basis of the said observations, it was sought to be canvassed that the Corporation must show reasonable co-relation between the licence fees being charged as compared to the expenditure which the Corporation is required to incur for regulating the activity.

10. On the other hand, Senior learned Advocate Shri S.I.Nanavati appearing for the Ahmedabad Municipal Corporation contended that the power of the Corporation to levy fee cannot be disputed. Even the petitioners do not seriously contest the authority of the Corporation to impose licence fee. He contended that licence fee being charged is regulatory in nature and not compensatory. Therefore, establishment of *quid pro quo* is not necessary. It is further contended that the rate of licence fee has not been revised in the City of Ahmedabad since 1997. With passage of time and with increase in commercial activities and with increase in the expenditure for maintenance of establishment, it was necessary that the licence fee be revised. It was further contended that apart from spending substantial amount on maintenance of the establishment and staff for regulating the activity of exhibiting advertisements on private sites, the Corporation also requires funds for maintenance and for providing amenities on such roads. It was contended that it was essential to provide lights on the roads and to keep the roads clean. It was contended that only when such basic requirements are fulfilled, that private property owners would be in a position to fetch substantial amount by way of rent by

letting out their properties for putting hoardings and sky signs for exhibiting advertisements. It is contended that amount collected by the Corporation is utilised for above activities. These benefits are being received by the private property owners and therefore, they cannot contend that licence fee cannot be charged at revised rates. It is further contended that to provide for scientific and just formula for collection of licence fees, the Corporation accepted the new methodology. For the said purpose, it was decided that licence fee will be charged at certain percentage of the offer made by the tenderer for the nearby tender site belonging to the Corporation. It was further contended that the demarcation of the properties situated within 80 meters of road junction to be treated differently from those situated beyond the said distance is a reasonable classification.

11. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of ***Sona Chandi Oal Committee and others v. State of Maharashtra reported in (2005) 2 SCC 345,*** wherein Hon'ble Supreme Court was pleased to uphold the revision of licence fees to be charged from money-lenders.

12. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of ***B.S.E. Brokers' Forum, Bombay and others v. Securities and Exchange Board of India reported in (2001) 3 SCC 482,*** wherein Hon'ble Supreme Court was pleased to uphold the licence fees to be levied on the basis of annual turnover of the brokers negating the contention that since licence fee is related to annual turnover, the same is in nature of tax.

13. From the above discussion, it can be seen that the central controversy in the present group of petitions is with respect to the rate revision in the licence fee sought to be implemented by the Ahmedabad Municipal Corporation against the petitioners and property owners of the City of Ahmedabad.

14. Before resolving the said controversy, one aspect of the matter which deserves summary conclusion can be noted. As noted earlier, the petitioners have also questioned the insistence of the Corporation in requiring the agents to compulsorily register themselves upon payment of registration charges of Rs. 1.50 lacs for a period of three years. That charge is recurring payment and not refundable deposit. As noted earlier, learned

Advocate for the petitioners had submitted that there is no authority under the law permitting the Corporation to collect such registration charges that too at such an exorbitant rate. It was contended that it may be open for the Corporation to collect the refundable deposit to regulate activities of agents and may even provide for forfeitures of such deposit in case of serious default, however to collect registration fees of Rs. 1.50 lacs for three years and at the end of three years to collect fresh charges is legally not permissible.

15. To this contention, learned advocate Shri Nanavati appearing for the Corporation at the very outset submitted that under the provisions of the B.P.M.C. Act and the Rules made therein, such collection of registration fee cannot be justified. He conceded that there is no legal authority with the Corporation to collect the registration fee from the agents that too at such high rates, which is recurring in nature. On the basis of this legal concession made on behalf of the Corporation, it is not necessary to delve any longer on this aspect of the matter. The action of the Corporation in seeking to collect registration fees from the agents is quashed. To the extent such charges have already been

collected, the same shall be refunded to the persons concerned and the Corporation shall refund the same to the agents within a period of six weeks from the date of receipt of copy of this order.

16. This brings me to the main aspect of the controversy which is highly contested.

17. As noted earlier, though in the petitions it is contended that the Corporation does not have any power to collect the licence fee from the petitioners, this aspect was not pressed in service with any seriousness on behalf of the petitioners. However, what was sought to be suggested was that the Corporation though has power to collect the licence fee from the petitioners, any levy which partakes the character of tax is legally not justified. It is contended that the Corporation is not empowered to collect tax under the B.P.M.C. Act and that the collection of licence fee in the garb of tax cannot be justified. It is therefore, contended that if the petitioners succeed in establishing before this Court that the Corporation is collecting tax from the petitioners and not fee, the levy needs to be quashed.

17.1 In the alternative it was suggested that licence fee to be charged from the petitioners cannot be excessive. Even if there is no requirement of *quid pro quo*, with mathematical exactitude, there must be reasonable co-relation between the fee charged and the expenditure incurred.

17.2 As noted, in support of this contention, strong reliance was placed on the decision of Hon'ble Supreme Court in the case of ***Calcutta Municipal Corporation and Others v. Shrey Mercantile Pvt. Limited (supra)***. Reliance was placed on the observations made by Hon'ble Supreme Court in paragraph No. 14 which reads as under:

> *"14. According to Words and Phrases, Permanent Edn. Vol.41, p.320, a charge or fee, if levied for the purpose of raising revenue under the taxing power is a "tax". Similarly, imposition of fees for the primary purpose of "regulation and control" may be classified as fees as it is in the exercise of "police power", but if revenue is the primary purpose and regulation of raising revenue to be used for public or governmental purposes and not in payment for a special privilege or service rendered by a public officer, in which case it is a "fee". Generally speaking, "taxes" are burdens of a pecuniary nature imposed for defraying the cost of governmental functions, whereas charges are "fees" where they are imposed upon a person to defray the cost of particular services rendered to his account.*
>
> Reliance was also placed on the observations

made in paragraph 16 which reads as follows:

> *"16. Therefore, the main difference between "a fee" and " a tax" is on account of the source of power. Although "police power" is not mentioned in the Constitution, we may rely upon it as a concept to bring out the difference between "a fee" and "a tax". The power to tax must be distinguished from an exercise of the police power. The "police power" is different from the "taxing power" in its essential principles. The power to regulate, control and prohibit with the main object of giving some special benefit to a specific class or group of persons is in the exercise of police power and the charge levied on that class to defray the costs of providing benefit to such a class is "a fee". Therefore, in the aforestated judgment in Kesoram cae it has been held that where regulation is the primary purpose, its power is referable to the "police power". If the primary purpose in imposing the charge is to regulate, the charge is not a tax even if it produces revenue for the Government. But where the Government intends to raise revenue as the primary object, the imposition is a tax. In the case of Synthetics & Chemicals Ltd. v. State of U.P. It has been held that regulation is a necessary concomitant to the police power of the State and that though the doctrine of police power is an American doctrine, the power to regulate is a part of the sovereign power of the State, in the garb of regulation, any fee or levy which has no connection with the cost or expense of administering the regulation cannot be imposed and only such levy can be justified which can be treated as a part of regulatory measure. To that extent, the State's power to regulate as an expression of the sovereign power has its limitations. It is no plenary as in the case of the power of taxation."*

Reliance was also placed on the observations made in paragraph 18, wherein it was stated that it is true that under Section 183(5), fees are payable for

mutation as may be prescribed under the regulations, still as stated above, the primarily object of such charge is to augment the revenue and the levy of such charge cannot be treated to be part of the regulatory measure. Further, under the regulations, the Corporation while prescribing the fees has levied fees on *ad valorem* basis which is one more circumstance to show that the impugned levy is in the nature of tax and not in the nature of fees. Further the quantum of levy indicates that it is a tax and not a fee.

Above observations made by the Hon'ble Supreme Court were in the background of a case where municipal authorities had decided to charge *ad valorem* fees in carrying out mutation entries in records after transaction is completed. It was observed that once application is made, the same is examined by the department and after hearing the objections if any, the record is ordered to be changed. It was therefore, observed that whatever may be the case of mutation, whether it is the case of transfer or devolution, the activity of mutation remains constant in all cases. The expenditure incurred in all the cases also cannot vary whatever be the value of the property or the cause of mutation. In the circumstances, there is no reason given

for charging different rates depending on the value of the property and the cause of transfer. It is observed that the quantum of fees is disproportionate to the so-called “services”.

18.1 In the case of ***Sona Chandi Oal Committee and others v. State of Maharashtra (supra)***, the Hon'ble Supreme Court considered the validity of levy of inspection fee for renewal of moneylender's licence. Fee was demanded at the rate of 1% of the maximum capital utilised by the moneylender during the period of licence sought to be renewed, or Rs.5,000/-, whichever is less. This levy was revised from the earlier standard or collecting licence renewal fees at the rate of 1% of the maximum capital utilised or Rs. 500/- whichever is less. Upholding the levy even in the revised form, the Hon'ble Supreme Court observed that the basic question to be decided is whether the fee of the nature impugned is, as a matter of fact, a tax in the guise of fee and whether it is so excessive or unreasonable as to lose the character of fee. Noting that the traditional concept of *quid pro quo* in a fee has undergone considerable transformation, it was further observed that so far regulatory fee is concerned, the service to be rendered

is not a condition precedent and the same does not lose the character of a fee provided the fee so charged is not excessive. It was observed that it was not necessary that the service to be rendered by the collecting authority should be confined to the contributories alone. The levy does not cease to be a fee merely because there is an element of compulsion or coerciveness present in it, nor is it a postulate of a fee that it must have a direct relation to the actual service rendered by the authority to each individual who obtains benefit of the service. *Quid pro quo* in the strict sense was not always a *sine qua non* for a fee. All that is necessary is that there should be a reasonable relationship between the levy of fee and the services rendered. It is not necessary to establish that those who pay the fee must receive direct or special benefit or advantage of the services rendered for which the fee was being paid and if one who is liable to pay, receive general benefit from the authority levying the fee, the element of service required for collecting the fee is satisfied.

The contention that the fee should be uniform was negated in the following manner:

> “28. Contention raised by Shri G.L.Sanghi, Senior Counsel for the appellants that the fees have

> to be uniform has no merit in view of the judgment of this Court in Secunderabad Hyderabad Hotel Owners' Assn. v. Hyderabad Municipal Corporation and State of Maharashtra v. Salvation Army, Western India Territory. It has been held in these judgments that fees are ordinarily uniform but the absence of uniformity is not the sole criterion on which it can be said that the levy is in the nature of tax."

18.2 In the case of ***B.S.E. Brokers' Forum, Bombay and others v. Securities and Exchange Board of India reported in (2001) 3 SCC 482***, Hon'ble Supreme Court was considering the legality of levy of registration fee from Stock Brokers by the Stock Exchange. The registration fees ranged from Rs. 1 lac for category (C) brokers to Rs. 5 lac for category (A) brokers. In addition thereof, the brokers were also required to pay recurring fees. Considering the nature of activities carried out by the Stock Exchange, it was held that fee levied is in the nature of regulating charge. With regard to the contention that the levy of fees is impermissible since the Stock Exchange does not provide any service to the brokers, it was observed that a lot of ice has melted in the Himalayas after rendering the judgments in the above-cited cases so also there has been a sea change in the judicial thinking as to the difference between a tax and a fee since then. Noting the recent judicial trend on the

subject, Hon'ble Supreme Court made following observations :

> *"38. As noticed in the City Corporation of Calicut, the traditional concept of quid pro quo in a fee has undergone considerable transformation. From a conspectus of the ratio of the above judgments, we find that so far as the regulatory fee is concerned, the service to be rendered is not a condition precedent and the same does not lose the character of fee provided the fee so charged is not excessive. It is also not necessary that the services to be rendered by the collecting authority should be confined to the contributories alone. As held in Sirsilk Ltd, if the levy is for the benefit of the entire industry, there is sufficient quid pro quo between the levy recovered and services rendered to the industry as a whole. If we apply the test as laid down by this Court in the abovesaid judgment to the facts of the case in hand, it can be seen that the Statute under Section 11 of the Act requires the Board to undertake various activities to regulate the business of the securities market which requires constant and continuing supervision including investigation and instituting legal proceedings against the offending traders, whereever necessary. Such activities are clearly regulatory activities and the Board is empowered under Section 11(2)(k) to charge the required fee for the said purpose, and once it is held that the fee levied is also regulatory in nature then the requirement of quid pro quo recedes to the background and the same need not be confined to the contributories alone."*

The contention that the board cannot levy fee for the capital expenditure was negatived in the following terms:

> *"41. The next contention of the petitioners that the Board cannot be permitted to levy the fee*

for its capital expenditure should also meet with the same fate. This Court in Salvation Army's case has specifically held

> *"The expenditure in constructing buildings for locating the head office and regional offices and the increase in the allowances or other amenities to the staff have also to be included in the costs of the services".*

That being the position in law, this argument should also fail. Even the argument that the amount required for the capital expenditure of the Board should be met by the Government of India and not out of the regulatory fee charged by the Board, has no force. The Board is an autonomous body created by an Act of Parliament to control the activities of the securities market in which thousand of members of gullible public will be investing huge sums of money. Therefore, there is every need for a vigilant supervision of the activities of the market and for that purpose if the Statute intends that the necessary funds should be met by collection of fees from the securities market itself then the said levy cannot be questioned on the ground that the monies required for the capital expenditure of the Board should be met by the Government of India. That apart, this Court in the case of Sreeninavasa General Traders has rejected a similar contention."

The contention that fee cannot be charged on the basis of annual turnover was also negatived by making following observations:

"45. It cannot be disputed that the 'annual turnover' of a broker is not the subject-matter of the levy but is only a measure of the levy. In other words, the fee is not being levied on the turnover as such but the fee is being levied on the brokers making their annual turnover as a measure of the levy which is a fee for regulating the activities of the securities market and for registration of the

brokers and other intermediaries in the said market. Therefore, it is futile to contend that such levy would be either a tax or a fee on turnover. It is a settled principle in law that if the State has the authority to impose a levy then it has a wide discretion in choosing the measure of levy provided, of course, it withstand the test of reasonableness. Many levies may have a similar measure but by such similarity in the measure, the levies do not become the same. Therefore, if the impugned levy adopts a measure which is either similar to the one adopted while levying turnover tax on income-tax, the impugned levy ipso facto by adoption of such measure, would not become either an income-tax or a turnover tax or even a fee on income or a fee on turnover. This Court in the case of Goodricke Group Ltd. v. State of West Bengal, while upholding a cess on tea estate which is a tax on land by the measure of yield by quantum of tea leaves produced in the tea estate held :

> *"A tax imposed on land measured with reference to or on the basis of its yield, is certainly a tax directly on the land. Apart from income, yield or produce, there can perhaps be no other basis for levy. "A tax on land is assessed on the actual or potential productivity of the land sought to be taxed". Merely because a tax on land or building is imposed with reference to its income or yield, it does not cease to be a tax on land or building. The income or yield of the land/building is taken merely as a measure of the tax; it does not alter the nature or character of the levy. It still remains a tax on land or building. There is no set pattern of levy of tax on lands and buildings - indeed there can be no such standardisation. There cannot be uniform levy unrelated to the quality, character or income/yield of the land. Any such levy has been held to be arbitrary and discriminatory. No one can say that a tax under a particular entry must be levied only in a particular manner, which may have been adopted hitherto. The legislature is free to adopt such method of levy as it chooses and so long as the character of levy remains the same, i.e., within the four corners of the*

particulars entry, no objection can be taken to the method adopted."

46. Similar is the view taken by this Court in the case of The Tyford Tea Co. Ltd. v. The State of Kerala.

47. Therefore, it would be futile to contend that the impugned fee merely because it is levied on the basis of the turnover of the brokers would either amount to a turnover tax or a tax on income. While we accept the levy based on annual turnover of the brokers as valid, we have to notice that the Expert Committee appointed by the Board has in its report held that there should be certain changes brought about in the definition of 'annual turnover' as also in the quantum of the levy pertaining to certain specific transactions which are treated as part of the turnover. It has recommended that for "jobbing transactions" the scale of fees may be reduced to One Two hundredth of 1 per cent, and in regard to carry forward, renewal or badla transactions, the off-setting entries made by the Exchange, may not be counted as part of the turnover, and further on Government securities, PSU Bonds and Units, the turnover will have to be calculated separately and a fee of one thousandth of one per cent may be charged on such turnover than the present scale of one hundredth of one per cent. It has also recommended that the activities such as underwriting and collection of deposits should not be taken into account for the purpose of calculating the turnover of the brokers. These recommendations of the Committee were, as a matter of fact, accepted by the Government of India also but as on date, the necessary changes have not been brought about by the Board in its Regulations. Consequently, to the extent of the recommendations made by the Expert Committee, we are of the opinion that the Board is bound to bring about corresponding changes so as to remove the anomalies pointed out by the Committee. This was pointed out to learned counsel for the respondents when it was submitted that the Board has accepted these recommendations and the proposed changes were not brought about because of the pendency of this petition and the necessary changes to incorporate the recommendations of the Bhatt Committee would be done after disposal of these

petitions. We record this submission on behalf of the Board and direct that the said changes recommended by the Bhatt Committee will be incorporated in the Regulations. Subject to the above, we are of the view that the challenge made to the levy based on the measure of turnover has to be rejected."

18.3 In the case of ***State of Bihar and others v. Shree Baidyanath Ayurved Bhawan reported in (2005) 2 SSC 762,*** the Hon'ble Supreme Court made following observations:

"31. In the case of Vam Organic Chemeicals Ltd. v. State of U.P. The distinction between regulatory fee and fee for services rendered has been succinctly brought out. It was held that there is a difference between regulatory fees and compensatory fees. In the case of regulatory fee, like licence fees, existence of quid pro quo is not necessary although such fees must not be excessive. Keeping in view the quantum of nature of work involved in supervising the activities under the Bihar Act, we are of the view that the fee mentioned in the impugned notification is reasonable and proper.

32. Similarly, in the case of State of U.P. v. Sitapur Packing Wood Suppliers this Court held that the question of quid pro quo is necessary when a fee is compensatory, for every fee quid pro quo is not necessary. In the case of regulatory fee it is not necessary to establish the factum of rendering of service. Therefore, there is no question of regulatory fee being invalidated on the ground that quid pro quo has not been established."

18.4 In the case of ***State of Gujarat and others v. Akil Gujarat Pravasi V.S. Mahamandal and others***

reported in (2004) 5 SSC 155, the Hon'ble Supreme Court made following observations:

> *"12. A fee is generally defined to be a charge for a special service rendered to individuals by some governmental agency. But the traditional view that there must be actual quid pro quo has undergone a sea change with the passage of time. Correlationship between the levy and the services rendered / expected is one of general character and not of mathematical exactitude. All that is necessary is that there should be a "reasonable relationship" between the levy of the fee and the services rendered. It is increasingly realised that the element of quid pro quo in the strict sense is not a sine qua non for a fee. (see Sreenivasa General Traders v. State of A.P. Municipal Corpn. Of Delhi v. Mohd. Yasin and B.S.E. Brokers' Forum v. Securities and Exchange Board of India.)"*

18.5 In the case of ***State of West Bengal v. Kesoram Industries Ltd. and others reported in (2004) 10 SSC 201***, Hon'ble Mr.Justice R.C.Lahoti, speaking for majority of the Bench made following observations:

> *"146. As stated earlier also, the impugned cess can be justified as fee as well. The term cess is commonly employed to connote a tax with a purpose or a tax allocated to a particular thing. However, it also means an assessment or levy. Depending on the context and purpose of levy, cess may not be a tax; it may be a fee or fee as well. It is not necessary that the services rendered from out of the fee collected should be directly in proportion with the amount of fee collected. It is equally not necessary that the services rendered by the fee collected should remain confined to the persons from whom the fee has been collected. Availability of indirect benefit and a general nexus between the persons bearing the burden of*

levy of fee and the services rendered out of the fee collected is enough to uphold the validity of the fee charged. The levy of the impugned cess can equally be upheld by reference to Entry 66 read with Entry 5 of the List II."

18.6 In the case of ***Secunderabad Hyderabad Hotel Owners Association and others v. Hyderabad Municipal Corporation, Hyderabad and Another reported in (1999) 2 SSC 274***, the Hon'ble Supreme Court made following observations:

"9. It is, by now, well settled that a licence fee may be either regulatory or compensatory. When a fee is charged for rendering specific services, a certain element of quid pro quo must be there between the service rendered and the fee charged so that the licence fee is commensurate with the cost of rendering the service. However, this is not the only kind of fee which can be charged. Licence fees can also be regulatory when the activities for which a licence is given require to be regulated or controlled. The fee which is charged for regulation for such activity would be validly classifiable as a fee and not a tax although no service is rendered. An element of quid pro quo for the levy of such fees is not required although such fees cannot be excessive.

Xxxx 10 to 14 xxxxx

15. It is, however, contended by the petitioners that if this is a fee, the quantum of fee levied is excessive. It is also unreasonable because the manner in which the fee is levied bears no nexus to the purpose for which the fee is levied. The petitioners contend that a licence fee based on the rent payable in respect of the premises in which the activities of an eating house or a lodging house are carried on is not a proper basis for charging a fee because the rent charged for the premises

has no nexus with the services rendered by the Corporation.

16. In the first place, it is not necessary that a fee should only be in the form of a lump sum fee. A fee can also be graded as in the present case. The Corporation has chosen the quantum of rent paid as the criterion for the quantum of fee to be charged. The rent under the relevant provisions of law in that connection, does have a nexus with the area in the occupation of the lodging house or eating house. In the case of activities carried on by these lodging house and eating houses, the area in their possession has a direct nexus with the extent of business activities. The need for cleanliness and hygiene, the generation of garbage and the extent of regulation that may be required depend upon the size of the premises which in turn controls the extent of activity. Undoubtedly, in a given case, if the premises are old, the rent may be less but that does not mean that classifying premises on the basis of the rent paid has no connection with the quantum of fee charged. "

18.7 In the case of ***A.P. Paper Mills Ltd. Etc. v. Government of A.P. And another reported in A.I.R. 2000 SC 3290***, the Hon'ble Supreme Court made following observations:

"30. A similar view was also taken by this Court in the case of State of Tripura v. Sudhir Ranjan Nath, (1997) 3 SCC 665 : (1997 AIR SCW 1178 : AIR 1997 1168) in which this Court considered the validity of levy of application fee for grant of licence under the Tripura Transit Rules. Discussing the question this Court made the following observations in paras 14 and 15 of the Judgment :

> *"We next take up the validity of the levy of application fee and licence fee of Rupees one thousand and Rupees two thousand respectively. In our opinion, the*

High Court was not right in holding that the said fee amounts to tax on the ground that it has not been proved to be compensatory in nature. In our opinion, the fee imposed by sub-rules (3) and (4) is a fee within the meaning of clause (c) of sub-section (2) of Section 41. It is regulatory fee and not compensatory fee. This distinction between compensatory fee and regulatory fee is well established by several decisions of this Court. Reference may be made to the decision of the Constitution Bench in Corpn. of Calcutta v. Liberty Cinema (AIR 1965 SC 1107).It has been held in the said decision that the expression "licence fee" does not necessarily mean a fee in lieu of services and that in the case of regulatory fees, no quid pro quo need be established. The following observations may usefully be quoted :

"This contention is not really open to the respondent for Section 548 does not use the word 'fee'; it uses the words 'licence fee' and those words do not necessarily mean a fee in return for services. In fact in our Constitution fee for licence and fee for services rendered are contemplated as different kinds of levy. The former is not intended to be a fee for services rendered. This is apparent from a consideration of Article 110(2) and Article 199(2) where both the expressions are used indicating thereby that they are not the same. In George Walkem Shannon v. Lower Mainland Dairy Products Board, 1938 AC 708 : (AIR 1939 PC 36), it was observed (at pp. 721-722 of AC : at pp. 38-39 of AIR) :

'if licences are granted, it appears to be no objection that fees should be charged in order either to defray the costs of administering the local regulation or to increase the general funds of the Province or for both purposes... It cannot, as their Lordships think, be an objection to a licence plus a fee that it is directed both to the regulation of trade and to the provision of revenue.'

It would, therefore, appear that a provision for the imposition of a licence fee does not necessarily lead to the conclusion that the fee must be only for services rendered."

"15. This decision has been followed in several decisions, including the recent decision of this Court in Van Organic Chemicals Ltd. v. State of U. P. (1997 (2) SCC 715) and Bihar Distillery v. Union of India (1997 AIR SCW 1240 : AIR 1997 SC 1208). The High Court was, therefore, not right in proceeding on the assumption that every fee must necessarily satisfy the test of quid pro quo and in declaring the fees levied by sub-rules (3) and (4) of Rule 3 as bad on that basis. Since we hold that the fees levied by the said sub-rules is regulatory in nature, the said levy must be held to be valid and competent, being fully warranted by Section 41."

31. Taking a similar view this Court in the case of Secunderabad Hyderabad Hotel Owners' Association v. Hyderabad Municipal Corporation, Hyderabad (1999) 2 SCC 274 : (1999 AIR SCW 286 : AIR 1999 SC 635) held that licence fee collected by Municipalities for running a lodging house, hotel, restraurant, coffee house, tea stall, eating house, soft drink stall, cafeteria, tiffin room, etc. is a fee and not a tax; and further that the fee being regulatory existence of an element of quid pro quo is not necessary for levying such fee albeit such fee cannot be excessive. The distinction between the two types of fees, fee which is regulatory and fee for services rendered was expressed by this Court in paragraphs 9 and 12 which are quoted hereunder :

"It is, by now, well settled that a licence fee may be either regulatory or compensatory. When a fee is charged for rendering specific services, a certain element of quid pro quo must be there between the services rendered and the fee charged so that the licence fee is commensurate with the cost of rendering the service although exact arithmetical equivalence is not expected. However, this is not the only kind of fee which can be

charged. Licence fees can also be regulatory when the activities for which a licence is given require to be regulated or controlled. The fee which is charged for regulation for such activity would be validly classifiable as a fee and not a tax although no service is rendered. An element of quid pro quo for the levy of such fees is not required although such fees cannot be excessive.

"In the present case, however, the fees charged are not just for services rendered but they also have a large element of a regulatory fee levied for the purpose of monitoring the activity of the licencees to ensure that they comply with the terms and conditions of the licence. Dealing with such regulatory fees, this Court in Vam Organic Chemicals Ltd. v. State of U. P. (1997) 2 SCC 715 observed that in the case of a regulatory fee, no quid pro quo was necessary but such fee should not be excessive. The same distinction between regulatory and compensatory fees has been made in the case of P. Kannadasan v. State of T. N. (1996) 5 SCC 670 : (1996 AIR SCW 3189 : AIR 1996 SC 2560) as well as State of Tripura v. Sudhir Ranjan Nath ((1997) 3 SCC 665 : (1997 AIR SCW 1178 : AIR 1997 SC 1168).

32. From the conspectus of the views taken in the decided cases noted above it is clear that the impugned licence fee is regulatory in character. Therefore, stricto senso the element of quid pro quo does not apply in the case. The question to be considered is if there is a reasonable correlation between the levy of the licence fee and the purpose for which the provisions of the Act and the Rules have been enacted/framed. As noted earlier, the High Court has answered the question in the affirmative. We have carefully examined the provisions of the Act and the Rules and also the pleadings of the parties. We find that the High Court has given cogent and valid reasons for the findings recorded by it and the said findings do not suffer from any serious illegality. It is our considered view that the licence fee has co-relation with the purpose for which the statute and the rules have been enacted."

19. Bearing in mind the above judicial pronouncements and applying to the present case, it would appear that private property owners in City of Ahmedabad are receiving periodical rentals by permitting companies to exhibit their advertisements on the properties owned by them by putting hoardings. Depending upon situation of the property rents would vary. The Municipal Corporation regulates the said activity by providing for certain standards. The Corporation has to ensure that the hoardings conform to such standards. The duty of the Corporation is also to ensure that such hoardings do not endanger safety of general public and citizens residing in the near vicinity. The advertisements to be exhibited have also to be conform to certain standards. The standards of legality and morality have to be maintained. While applying for permission to exhibit the advertisements the applicants have to declare that the advertisement will not be such as would create perverse impression on the minds of general public or one which would offend the sense of morality. The applicants also have to make certain declaration and give undertaking to the Corporation on the basis of which permission for exhibiting advertisement is granted. All these

activities would require certain regulatory control to be exercised on part of the Corporation. It is not in dispute that this would require maintenance of staff for processing of applications, for granting licence as also, to periodically carry out inspection to ensure that the hoardings do not breach any of the legal provisions or other requirements laid down by the Corporation.

20. Periodical inspections would also be necessary to ensure that safety standards are maintained and public safety is not *jeopardised*. Steps may also have to be taken to ensure that the advertisements do not breach any of the legal requirements, that advertisements are such as would conform to general standards of decency. All these activities would require the Corporation to provide for certain regulations. For the said purpose if the Corporation levies licence fee, the true character of fee has to be determined as a regulatory licence fee and licence fee cannot be characterized as compensatory in nature. Such regulatory licence fees is being recovered by the Corporation since many years now. In that view of the matter, it is not possible to conclude that what is sought to be levied by the Corporation is tax in the garb of licence fee.

21.1 Section 244 of the B.P.M.C. Act provides for regulations as to sky-signs. Section 244 reads as follows:

"244. Regulations as to sky-sings.

(1) No person shall, without the written permission of the Commissioner, erect, fix or retain any sky-sign of the kind prescribed by rules whether existing on the appointed day or not. Such written permission [may be granted or renewed for a period not exceeding two years] from the date of each such permission or renewal, subject to the conditions that such permission shall be deemed to be void if:-

(a) any addition is made to the sky-sign except for the purpose of making is secure under the direction of the City Engineer;
(b) any change is made in the sky-sign, or any part thereof;
(C) the sky-sign or nay part thereof fall either through accident, decay or any other cause;
(d) any addition or alteration is made to, or in, the building, or structure upon or over which the sky-sign is erected, fixed or retained, involving the disturbance of the sky-sign or any part thereof;
(e) the building of structure upon or over which the sky-sign is erected, fixed or retained becomes unoccupied or be demolished or destroyed.

(2) Whereas any sky-sign shall be erected, fixed or retained after the appointed day upon or over any land, building or structure, save and except as permitted as hereinbefore provided, the owner or person in occupation of such land, building or structure shall be deemed to be the person who has erected, fixed or retained such sky-sign in contravention of the provisions of this section, unless he proves that such contravention was committed by a person not in his employment or under his control, or was committed without his connivance.

(3) If any sky-sign be erected, fixed or retained

contrary to the provisions of this section, or after permission for the erection, fixing or retention thereof for any period shall have expired or become void, the Commissioner may, by written notice, required the owner or occupier of the land, building or structure, upon or over which the sky-sign is erected, fixed or retained, to take down and remove such sky-sign."

21.2 Section 245 of the B.M.P.C. Act provides for regulation and control of advertisements. Section 245 reads as follows:

"245. Regulation and control of advertisements.

(1) No person shall, without the written permission of the Commissioner, erect, exhibit, fix or retain any advertisement upon any land, building, wall, hoarding or structure:

Provided always that such permission shall not be necessary in respect of any advertisement which is not illuminated advertisement or a sky-sign and which-

(a) is exhibited within the window of any building, or

(b) relates to the trade or business carried on within the land or building upon which such advertisement is exhibited or to any sale or letting of such land or building or any effects therein, or to any sale, entertainment or meeting to be held upon or in the same, or to the trade or business carried on by the owner of any omnibus or other vehicle upon which such advertisement is exhibited,or

(c) relates to the business of any railway company, or

(d) is exhibited within any railway station or

upon any wall or property or a Railway administration not fronting any streets.

(2) Whereas any advertisement shall be erected, exhibited, fixed or retained after three months from the enactment of this section upon any land, building, wall, hoarding or structure in contravention of the provisions of sub-section (1) the owner or person in occupation of such land, building wall, hoarding or structure shall be deemed to be the person who has erected, exhibited, fixed or retained such advertisement in contravention of the provisions of this section, unless he proves that such contravention was committed by a person not in his employment or under his control or was committed without his connivance.

(3) If any advertisement be erected, exhibited, fixed or retained contrary to the provisions of this section or after the expiry of the permission granted under sub-section (1) the Commissioner may, by notice in writing, require the owner or occupier of the land building, wall, hoarding or structure upon which the advertisement has been erected, exhibited, fixed or retained, to take down or remove the advertisement.

(4) (a) The word “structure” in this section shall include an omnibus and any vehicle or moveable board used primarily as an advertisement or an advertising medium; and

(b) the expression “illuminated advertisement” in this section shall not include an illuminated display of goods, if such display-

(i) is of goods merely bearing lables showing the names of the article or of its manufacturer or of both, and;

(ii) is made by lighting which is not, in the opinion of the Commissioner, more than is necessary to make the goods and labels visible at night].

21.3 Section 386 of the Act provides for general provisions regarding grant, suspension or revocation of licences and written permissions and levy of fee etc. which reads as follows:

> "386. General provisions regarding grant, suspension or revocation of licences and written permissions and levy of fees etc.
>
> *(1) whenever it is proved by or under this Act that a licence or a written permissions may be given for any purpose, such licence or written permission shall specify the period for which, and the restrictions and condition subject to which, the same is granted and the date by which an application for the renewal of the same shall be made and shall be given under the signature of the Commissioner or of a municipal officer empowered under Section 69 to grant the same.*
>
> *(2) Except as may otherwise be provided by or under this Act, for every such licence or written permission a fee may be charged at such rate as shall from time to time be fixed by the Commissioner, with the sanction of the Corporation.*
>
> *(3) Subject to the provisions of the provisio to sub-section (1) of section 378, any licence or written permission granted under this Act, may at any time be suspended or revoked by the Commissioner, if he is satisfied that it has been secured by the holder through misrepresentation or fraud or if any of its restrictions or conditions is infringed or evaded by the person to whom the same has been granted, or if the said person is convicted of any infringement of any of the provisions of this Act or of any rule, by-law or standing order in any matter to which such licence or permission relates.*

(4) When any such licence or written permission is suspended or revoked, or when the period for which the same was granted has expired, the person to whom the same was granted shall, for all purposes of this Act, be deemed to be without a licence or written permission, until the Commissioner's order for suspending or revoking the licence or written permission is cancelled by him or until the licence or written permission is renewed, as the case may be:

Provided that, when an application has been made for the renewal of a licences or permission by the date specified therein, the applicant shall be entitled to act as if it has been renewed, pending the receipt of orders.

(5) Every person to whom any such licence or written permission has been granted shall, at all reasonable times, while such written permission or licence remains in force, if so required by the Commissioner, produce such licence or written permission.

(6) Every application for a licence or written permission shall be addressed to the Commissioner.

(7) The acceptance by or on behalf of the Commissioner of the fee for a licence or permission shall not in itself entitle the person paying the fee to the licence or permission.

22. From the combined reading of statutory provisions noted hereinabove, it would appear that sky-signs and advertisements within the limits of Municipal Corporation have to be regulated in certain manner. The Corporation has to ensure that the sky-signs is sufficiently secure. The Corporation has to ensure that the regulations contained in Section 244 pertaining to sky-signs are adhered to. Under Section 245 the

Corporation enjoys the power to control the exhibition of advertisements on any land, building, hoardings or structure. Such advertisements cannot be exhibited without permission of the Commissioner. Section 386 of the Act empowers the Corporation to collect licence fees for the purpose of granting permission for exhibiting advertisements. It would thus, become further clear that licence fee being charged by the Corporation is regulatory in nature and that, the Act authorizes the Corporation to collect such fee. In fact so far as the authority of the Corporation to collect the licence fee is concerned, even the petitioners have not raised any serious doubt. What is sought to be suggested is that the licence fee being charged is tax in the garb of fee.

23. Having concluded that licence fee being levied by the Corporation is not a tax and the same is fee in the nature of regulatory fee, it would be necessary to examine other contentions raised on behalf of the petitioners. As noted in brief earlier, it was the case of the petitioners that even though in strict sense of the term *quid pro quo* may not be necessary, licence fee that the Corporation may collect must have reasonable nexus with the services rendered and such licence fee cannot be excessive. Second limb of the argument was

that in any case, licence fee cannot be co-related to the potential or the commercial value of the advertisement site and the same must be charged at flat uniform rate.

24. Since these aspects are closely interlinked and overlapped at some stage or other, I find it convenient to deal with these issues simultaneously. It was urged before this Court that the Corporation collects licence fees from all the agents and property owners total of which comes to approximately Rs. 1.80 Crores and considering the proposed increase in the licence fees, the total collection would go up several times that much. It was further contented that the Corporation does not maintain such large establishment for the purpose of regulating the activity which would justify collection of licence fee at increased rate.

25. Learned Advocate for the petitioners pointed out the averments made in the reply statement filed by the Corporation to the effect that the amount is spent not only for providing services to the petitioners but is spent also for maintenance work. It was further contended that since substantial amount of funds out of the fees collected from the petitioners is being diverted for purposes other than for regulating of the activities,

licence fee cannot be justified. It was contended that no direct or even indirect benefit is being received by the petitioners individually or as a class. It was further the case of the petitioners that formula adopted by the Corporation for collection of licence fee is discriminatory. It was suggested that the commercial value or the potential of advertisement sites cannot be the basis for charging licence fee. The licence fee ought to be determined uniformly and cannot vary according to capacity of the site to absorb such fee.

26. It was additionally contended that fee charged is excessive. Firstly, because the amount collected is far in excess of amount required by the Corporation for providing regulatory machinery. Secondly in other cities such as Rajkot, Surat and Vadodara in the State of Gujarat or even in cities outside State of Gujarat, such as Culcutta and Hyderabad such collection rates are much lower than those proposed by the Municipal Corporation of Ahmedabad. It was in this regard, contended that the petitioners as agents do not have sufficient margin of profit which would permit them to absorb such quantum jump in rates of licence fee.

27. On the other hand learned advocate Shri

Nanavati submitted that Municipal Corporation enjoys certain degree of discretion in deciding the licence fee rates. Unless found to be arbitrary and highly excessive, this Court would not intervene in exercise of such discretion. It was next contended that the Corporation not only provides for regulatory mechanism but also provides proper roads with proper amenities which permits the petitioners to carry on their business by selling sites for advertisements. It was further contended that money spent on such development, maintenance, and other works can be treated to have been spent for the petitioners directly and indirectly. It was also contended that the rates sought to be compared with other cites has no basis, and that facts and figures are not placed before the Court and therefore, these highly disputed questions of facts can be gone into only in a civil suit. In short, it was sought to be suggested that it is not possible to compare the rates of licence fees fixed in other cites without comparing the situation, circumstances and other relevant aspects of the matter.

28.1 In my view the Corporation is providing certain regulatory mechanism for which the licence fee is being charged. Since I have already concluded that licence fee charged is regulatory in character, requirements of *quid*

pro quo cannot be insisted upon. Only question is whether fee so charged is so excessive as to permit this Court to interfere.

28.2 It is not possible to accept the contention of the petitioners that since different rates are being charged in different cities, the rates being charged in the city of Ahmedabad should be taken as excessive. No material is placed before this Court to permit this Court to carry out exercise of comparing rates prevailing in other cities as compared to the city of Ahmedabad. By simply producing chart indicating rates of licence fees in other cities, the petitioners cannot establish that the rates being charged in the city of Ahmedabad are excessive. Large number of factors such as situational differences, potential of different areas of different cities and large number of such relevant factors have to be gone into before this Court can undertake the exercise to compare the rates of different cites, to find out whether the rates prevailing in Ahmedabad are comparatively speaking really excessive. For want of material, it is not possible for me to undertake this exercise in the present case.

29. It is not in doubt that the Corporation spends

certain amount towards providing regulatory machinery to regulate activities in question. It is also not in dispute that the amount of licence fee which is recovered from the petitioners and other similarly situated persons concerned, forms part of collection of the Corporation, portion of which is utilised for the said regulatory machinery. It is equally not in dispute that substantial portion of the earning is utilised for the purposes other than for specific regulatory controls. In fact the Corporation in the affidavit-in-reply has stated that part of the fund so collected is being utilized for providing better amenities, and facilities for the commuting public. It is contended that only when such facilities are provided that the petitioners are able to erect sites for exhibiting advertisements.

30. As noted above, strict fulfillment of *quit pro quo* is not necessary. A portion of funds collected by way of fee is utilised for the purpose of maintaining regulatory machinery by the Corporation. Besides, these funds are also diverted for the purpose of betterment of the roads and for ensuring that the commuting public is provided with proper facilities. Only when the Corporation provides proper roads with lighting, parking facilities wherever necessary and by providing for proper

drainage and keeps such roads clean and well maintained that, the property owners on either side of such roads would be able to attract customers to exhibit their advertisements on their properties. One does not need much thinking to appreciate that on roads full of pot holes and dust on dirt filled streets, on small narrow lanes, on congested bye-lanes there would be no potential for commercial development and there would be no potential for exhibiting attractive advertisers. The companies who put up their advertisements exhibiting their products and services would wish to maximise their profits. Such companies would pay hefty rentals only if they find that their advertisements are likely to be seen by large number of commuters. If this purpose is not fulfilled, advertisers would have no interest in putting up their advertisements.

31. It is only on good roads that commercial activity would flourish. It is only on such roads that the property owners would be in a position to get maximum possible price by way of rentals from the companies to put their advertisements. Good clean and wide roads with proper facilities is thus absolutely necessary for such activity to flourish. It can hardly be disputed that two of the prime roads of the city viz. Ashram Road and

C.G.Road have flourished mainly on account of good and well maintained roads. On such roads maximum commercial activities would flourish. On these roads, one would find shops, shopping malls, plazas, eating joints, fancy stylish restaurants, corporate offices and multinational Banks. All these activities in turn would augment the earning potential of the sites of the property owners on either side of such roads. Without these roads being well designed, well maintained and well looked after, there would be no commercial potential for such property owners. These roads provide for growth catalyst for commercial activities to flourish. It is only when such roads are developed that maximum number of persons would be visiting such sites either for shopping or for visiting different offices, banks or restaurants. It is only then that the private owners would be in a position to extract maximum possible revenue out of renting their sites for the purpose of exhibiting advertisements. Existence of good roads which are well maintained and well looked after cannot be separated from the potential of the property owners to earn maximum revenue from the proposed sites for advertisements. One does not need much thinking to appreciate that on roads such as Ashram Road and C.G.Road, all advertisers would be paying highest rentals prevailing in the city. Whereas in remote

suburban areas where such development has not yet reached, the prevailing rates for advertisements would be substantially lower. Why should Ashram Road and C.G.Road receive such preferential attention by the Corporation is the question this Court cannot go into. Fact remains that these roads house some of the prime properties in the city and it is only on account of such commercial development, that existing property owners can claim highest rent by permitting companies to exhibit their advertisements. Therefore, money spent by the Corporation for building these roads, for maintaining these roads in the prime condition and for maintaining other facilities such as proper parking and drainage on these roads, ultimately benefits owners of the properties and in turn the petitioners as agents and other similarly situated persons. It is therefore, not possible to accept the contention that by spending such money on maintenance of the roads and other incidental facilities around the area, the petitioners receive no direct or indirect benefit from the Corporation. As discussed earlier, if the roads were to become full of pot holes and have no cleanliness, if debris or dirt is allowed to collect around these roads, if heaps of filth give constant stench, automatically, the glitter of the roads would vanish. The property owners would no longer enjoy same

potential, would not enjoy the same earning from getting maximum rental out of their properties. It is therefore, not possible for such property owners and the present petitioners to argue that from the collection of licence fees funds cannot be spent on improvement and maintenance of the road. Though it is suggested that rate revision was only to benefit tenderer viz. Sambav Media Pvt. Ltd. and to ensure that even after quoting unreasonably high price, the said company does not go out of the business, there is no material on record except bare statements. The contention cannot be accepted for many reasons. Firstly, the said company is not joined as party-respondent in this litigation. Secondly, no other person is joined in the personal capacity to answer the allegations of *mala fide*. As noted, no material has been produced to establish these allegations. This contention therefore needs to be recorded only for rejection. It was also suggested that the price quoted by the tenderer is illogical and if the tenderer ultimately does not fulfill his commitments, the petitioners would nevertheless be paying licence fees at the rate of 16 % offered by the tenderer. To my mind this argument is hypothetical in nature. It is stated by the Corporation in the affidavit that the tenderer has to pay six months of tender amount in advance. This is a substantial

amount any person would have to deposit with the Corporation and would establish his *bona fide* and seriousness. In case of default, the party would lose the amount of money and in any case the developments subsequent to awarding of the tender do not suggest that the apprehension of the petitioners is well founded.

32. One more aspect of the matter which cannot be lost sight of is that the rates of licence fee had remained stagnant since 1997. Nearly nine years have passed since then. Commercial activities in and around Ahmedabad have gone up. The city has been expanding, Population is increasing. Money has also devaluated. Business have gone up and earnings have increased. Property prices have shot up over past few years. The rates which were prevailing in the year 1997 cannot be hold good in the year 2006. Therefore, rate revision was imminent. What should have been the revised rate is the only question. This Court would not interfere with exercise of discretionary power of the Corporation when the powers are exercised in a reasonable manner. Unless it is pointed out that rates so revised are highly excessive, this Court would not interfere with the policy decision of the authority. This Court has no power to dissect the decision of the Corporation which is primarily in the nature of policy matter. Corporation

enjoys certain discretion in this regard, I do not see any reason to interfere with the rate revision.

33. As noted above, different areas of city of Ahmedabad carry different potential. Property owners of properties would obviously get different rents for advertisements exhibited in their properties. For the purpose of deciding rate of the licence fee, the Corporation has adopted the structure of the potential value of the rent of the advertisement on the property in question, I do not find any illegality in the same. This concept was accepted by the Hon'ble Supreme Court in the case of B.S.E. Brokers' Forum, Bombay and others v. Securities and Exchange Board of India (supra). To ascertain the true potential, the Corporation adopted the basis of rate offered by the tenderer for the Corporation sites in the near vicinity. One must remember that tenderer offered certain rate to the Corporation which he would be in a position to afford. On such rate, tenderer would have to add his own administrative expenses and also add his own reasonable profit. It is the sum total of these figures, which would be the true market rate for advertisements on such sites. It is at that rate that potential advertiser would have to pay to the tenderer to exhibit his advertisement. The Corporation therefore,

committed no error in adopting the rate offered by the tenderer to the Corporation for tender sites as a base figure upon which the licence fee is calculated. 16% of the said rate for those properties which are within 80 meters and 8% for those properties which are outside 80 meters of a road junction, cannot be termed as excessive. No facts and figures are placed before this Court to examine the true impact of such increase on the earning potential of the petitioners. Even otherwise, as noted above, it is the base rate which the tenderer offered to pay to the Corporation, which has been accepted as yard stick. The tenderer has to keep sufficient margin for administrative expenses, interest loss on advance payments as also his net profit. It is only after these additions are made, that market value of site in question would be determined. On this count also I do not see that increase in the rate is excessive. It may be that in certain areas on account of higher commercial development, the rates have undergone greater increase than in certain other areas with lesser development. This however, would not change the nature of levy and I see no illegality committed by the Corporation.

34. One aspect of the matter still remains

outstanding. At the fag end of the arguments, it was contended on behalf of the petitioners that in certain areas of the city there are certain properties which are far away from any tender site. To compare such properties with tender sites situated at far away places would be unreasonable. For want of material on record in this regard, I refrain from making any conclusive observations. It would however appear that if the petitioners are correct in their factual averments, I see a valid point being made out. If the private property is situated far away from the tender site, with which it is compared for the charging of licence fees, the same would not stand the test of reasonableness. With these observations, I permit the petitioners to approach the Corporation in such individual cases to redress their grievances and to take corrective measure. The Commissioner shall examine such cases and take steps as may be found necessary bearing in mind the observations made hereinabove.

35. The learned advocate for the petitioners Shri Mehta submitted that Corporation itself has passed resolution No. 345 dated 29.06.2000 in which it is decided that there would be no separate property taxes

levied from the petitioners. The learned Senior advocate Shri Nanavati submitted that this resolution is being reconsidered by the State Government. However, currently resolution is in operation. Under the instructions, he further stated that the Corporation will follow the resolution till the same is in operation and subject to final decision that the State Government may take in this regard. In view of this statement, no further directions are required to be issued in this regard.

36. In the result, the petitions are allowed to the extent of quashing the collection of registration fees from the petitioners. Any amount received by the Corporation under this head shall be refunded within six weeks from the date of receipt of a copy of this order. In case of any further delay, the amount shall carry interest at the rate of 8% per annum. In so far as the challenge to revision of licence fee is concerned, the same is rejected. The petitions are disposed of accordingly.

37. At this stage, learned advocate for the petitioners requested that the order regarding licence fee may be stayed for a period of four weeks. The request

of the learned advocate for the petitioners is accepted. By earlier interim order dated 11st August, 2005 and 19th October, 2005, the petitioners have been paying *ad hoc* licence fee to the respondents. Such arrangements shall continue till then.

[Akil Kureshi, J.]

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